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From: Amelia Turner Legal Assistant to Stephen R. Tkacs	No. of Pages Including Cover Sheet: 33
Message: Transmitted herewith: <ul style="list-style-type: none">• Transmittal Document; and• Appeal Brief.	
Re: Application No.: 09/721,093 Attorney Docket No: YOR9-2000-0126-US1	
Date: Thursday, September 08, 2005	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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SEP 08 2005

In re application of: Gupta et al.

Serial No.: 09/721,093

Filed: November 22, 2000

For: Handling Order (Proxy) Bids in
an On-Line Auction§
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§
§

Group Art Unit: 3628

Examiner: Graham, Clement B.

Attorney Docket No.: YOR9-2000-0126-US1

35526

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By: Amelia C. Turner
Amelia C. Turner

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Sir:

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- Appeal Brief (37 C.F.R. 41.37)

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Respectfully submitted,


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By:


Andrea C. Turner

APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on July 8, 2005.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this
brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

09/09/2005 MBIZONES 00000032 300510 09/21093

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(Appeal Brief Page 1 of 31)
Gupta et al. - 09/721,093

REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS**A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1, 4-18, and 21-31

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 2, 3, 19, and 20
2. Claims withdrawn from consideration but not canceled: NONE
3. Claims pending: 1, 4-18, and 21-31
4. Claims allowed: NONE
5. Claims rejected: 1, 4-18, and 21-31
6. Claims objected to: NONE

C. CLAIMS ON APPEAL

The claims on appeal are: 1, 4-18, and 21-31

STATUS OF AMENDMENTS

Amendments were filed on May 27, 2005. The Examiner denied entry of the amendments. The Advisory Action issued July 13, 2005, gave no reasons for denying entry of the amendments. The claims stand as amended in the Response to Office Action filed September 16, 2004.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1:

The presently claimed invention provides a method in a server data processing system for generating bids for an auction. The present invention sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. The bids for the set of bidding agents are sorted using upper limits for the bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. The present invention identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The present invention then selects a number of bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The present invention sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14. The present invention then submits a bid in the data processing system for each of the bidding agents on the final equilibrium price. See specification, page 11, line 26, to page 12, line 1; page 12, lines 14-20.

Independent claim 5:

The presently claimed invention provides a method in a server data processing system for generating bids for an auction. The present invention sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. Each bid for the set of bidding agents includes a quantity. The plurality of binds include order bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. An order bid is also referred to as a "proxy bid," which is a bid submitted by a bidding agent on behalf of a buyer. See specification, page 3, lines 26-29. The present invention identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The present invention then selects a

number of order bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The present invention sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14.

Independent claim 13:

The presently claimed invention provides a data processing system comprising a bus system 206, 212, 216, 226, 228, a communications unit connected to the bus system 218, 220, a memory connected to the bus system 209, and a processing unit connected to the bus system 202, 204. See specification, page 9, line 15, to page 10, line 24. The memory includes a set of instructions. See specification, page 15, line 4, to page 18, line 19; page 19, line 15, to page 20, line 1. The processing unit sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. Each bid for the set of bidding agents includes a quantity. The plurality of binds include order bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. An order bid is also referred to as a "proxy bid," which is a bid submitted by a bidding agent on behalf of a buyer. See specification, page 3, lines 26-29. The processing unit identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The processing unit then selects a number of order bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The processing unit sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14.

Independent claim 18:

The presently claimed invention provides a data processing system for generating bids for an auction. The present invention sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. The bids for the set of bidding agents are sorted using

upper limits for the bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. The present invention identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The present invention then selects a number of bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The present invention sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14. The present invention then submits a bid in the data processing system for each of the bidding agents on the final equilibrium price. See specification, page 11, line 26, to page 12, line 1; page 12, lines 14-20.

The means recited in independent claim 18, as well as dependent claim 21, may be data processing hardware within the server computer shown in Figure 2, for example, operating under control of software performing the steps described in the specification at page 15, line 4, to page 18, line 19, or equivalent.

Independent claim 22:

The presently claimed invention provides a data processing system for generating bids for an auction. The present invention sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. Each bid for the set of bidding agents includes a quantity. The plurality of binds include order bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. An order bid is also referred to as a "proxy bid," which is a bid submitted by a bidding agent on behalf of a buyer. See specification, page 3, lines 26-29. The present invention identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The present invention then selects a number of order bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable

portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The present invention sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14.

The means recited in independent claim 22, as well as dependent claims 23-29, may be data processing hardware within the server computer shown in Figure 2, for example, operating under control of software performing the steps described in the specification at page 15, line 4, to page 18, line 19, or equivalent.

Independent claim 30:

The presently claimed invention provides a computer program product for generating bids for an auction. The present invention sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. The bids for the set of bidding agents are sorted using upper limits for the bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. The present invention identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The present invention then selects a number of bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The present invention sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14. The present invention then submits a bid in the data processing system for each of the bidding agents on the final equilibrium price. See specification, page 11, line 26, to page 12, line 1; page 12, lines 14-20.

Independent claim 31:

The presently claimed invention provides a computer program product for generating bids for an auction. The present invention sorts a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids. Each bid for the set of bidding agents includes a

quantity. The plurality of binds include order bids. See specification, page 12, line 21, to page 14, line 10; page 15, lines 4-23. An order bid is also referred to as a "proxy bid," which is a bid submitted by a bidding agent on behalf of a buyer. See specification, page 3, lines 26-29. The present invention identifies a first bid from the plurality of bids for which an unallocatable portion (shortfall) of a requested quantity is present. See specification, page 12, lines 27-29; page 15, lines 24 and 25; page 16, lines 16-23. The present invention then selects a number of order bids from the plurality of bids that are higher in the sorted set of bids than the first bid. Each bid in the selected number of bids has an allocation requirement less than the unallocatable portion of the first bid (the shortfall). See specification, page 12, line 29, to page 13, line 24; page 16, lines 11-13. The present invention sets a price for the number of bids to form a final equilibrium price. See specification, page 13, lines 23-32; page 16, line 14.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection on appeal are as follows:

- I. Claims 1 and 4-12 are rejected under 35 U.S.C. § 102 as being allegedly directed to non-statutory subject matter;
- II. Claims 1, 4-18, and 21-31 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by *Boarman et al.* (U.S. Patent No. 6,609,112).

ARGUMENT

I. 35 U.S.C. § 101, Alleged Non-Statutory Subject Matter in claims 1 and 4-12

The Final Office Action rejects claims 1 and 4-12 under 35 U.S.C. § 101 as being allegedly directed towards non-statutory subject matter. To be statutory under 35 U.S.C. § 101, the claimed invention must produce a "useful, concrete and tangible result." *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (*Brenner v. Manson*, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); *In re Ziegler*, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)). The invention presented in claims 1 and 4 clearly produces a useful, concrete and tangible result, because the invention submits a bid, in a data processing system, for each of a number of order bids based on a final equilibrium price. The invention presented in claims 5-12 clearly produces a useful, concrete and tangible result, because the invention sets a price, in a data processing system, for the number of order bids to form a final equilibrium price. One cannot say that the invention recited in claims 1 and 4-12 represented nothing more than an idea or concept, nor is the present invention simply a starting point for future investigation or research.

During the interview on May 23, 2005, the Examiner argued that the claims are not in the technological arts, because the claims do not recite a computer. Appellants argued that a "data processing system" is technological and has been interpreted as technology for many years. The Manual of Classification itself defines the 700 classes, like class 364 before them, to be "data processing." Clearly, the Office has interpreted data processing to be technological for quite some time. However, in the instant case, a "data processing system" is apparently being interpreted to encompass a system of non-technological elements. The Examiner proposed including limitations, such as a "computer" or a "processor." This raises a question as to why a "processor" is technological, but a "data processing system" -- a whole system of elements that process data -- is not technological. Regardless, the Examiner never presented a legal basis for requiring "technological arts" in the claims in the first place.

To advance prosecution, a Response to Final Office Action amending independent claims 1 and 5 to include further limitations to technology was filed with the Office. The amendment was denied entry. The Advisory Action proffered no reason whatsoever for denying entry of the amendment.

The Final Office Action provides no legal basis for requiring recitations to "technological arts" in the claims. Regardless, the present invention, as recited claims 1 and 4-12, is in the technological arts and produces a useful, concrete and tangible result. Therefore, Appellants respectfully request that the rejection of claims 1 and 4-12 under 35 U.S.C. § 101 not be sustained.

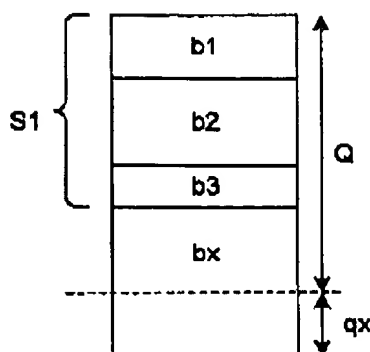
II. 35 U.S.C. § 102, Alleged Anticipation of claims 1, 4-18, and 21-31

The Final Office Action rejects claims 1, 4-18, and 21-31 under 35 U.S.C. § 102 as being allegedly anticipated by *Boarman et al.* (U.S. Patent No. 6,609,112). This rejection is respectfully traversed.

Boarman teaches a system and method for providing proxy-based online Dutch auction services. Bidders provide proxies or bidding agents to submit bids without intervention from the human bidders. The auction manager sorts bids in accordance with proxy values. If a bid is encountered for which the requested quantity is less than or equal to the available quantity, then the bid is accepted and the quantity available value is decremented. If a bid is encountered for which the requested quantity is greater than the available quantity, then the auction manager records a partial bid. See *Boarman*, col. 5, line 56, to col. 6, line 7.

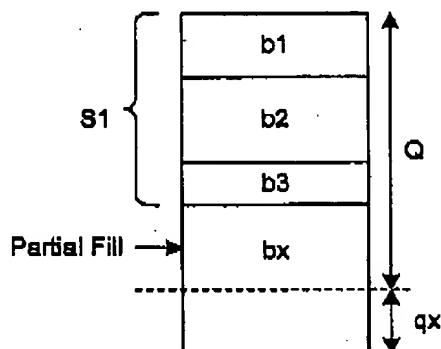
Boarman does not teach or suggest selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid and setting a price for the number of bids to form a final equilibrium price, as discussed below.

The following illustration depicts a typical sorted set of bids in an auction, such as that described in *Boarman*:



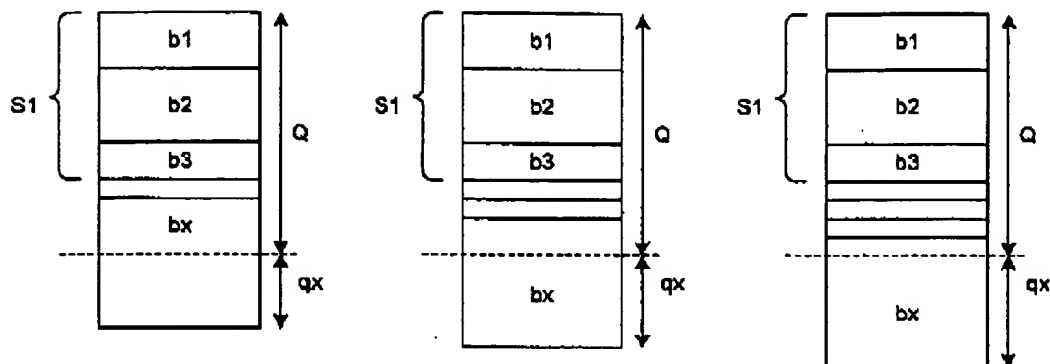
The bids are sorted from $b1$ to b_x in order of price. Q is the quantity of product for bid. Each bid sets forth a price and an amount. The subset, $S1$, represents bids that can be fully allocated. Bid b_x cannot be fully allocated, but may be partially allocated. Thus, the amount of q_x is the amount that cannot be allocated.

Typically, as is the case with *Boorman*, the bids will be allocated as follows:



Thus, bids $b1$, $b2$, and $b3$ are fully allocated and b_x is partially filled. Again, q_x is the unallocatable amount of the bids. With this bid ordering technique, a problem may arise with automated bidding agents. As described in the present specification, an order bid is a bid placed on behalf of a buyer who is unable to participate in the auction. An order bid is placed by a bidding agent. See specification, page 3, lines 26-29.

These bidding agents may determine that a bid having a higher price than b_x and a quantity below q_x will beat out bid b_x . Consequently, two or more bidding agents may get into a "bidding war" and present many small bids, as shown below:



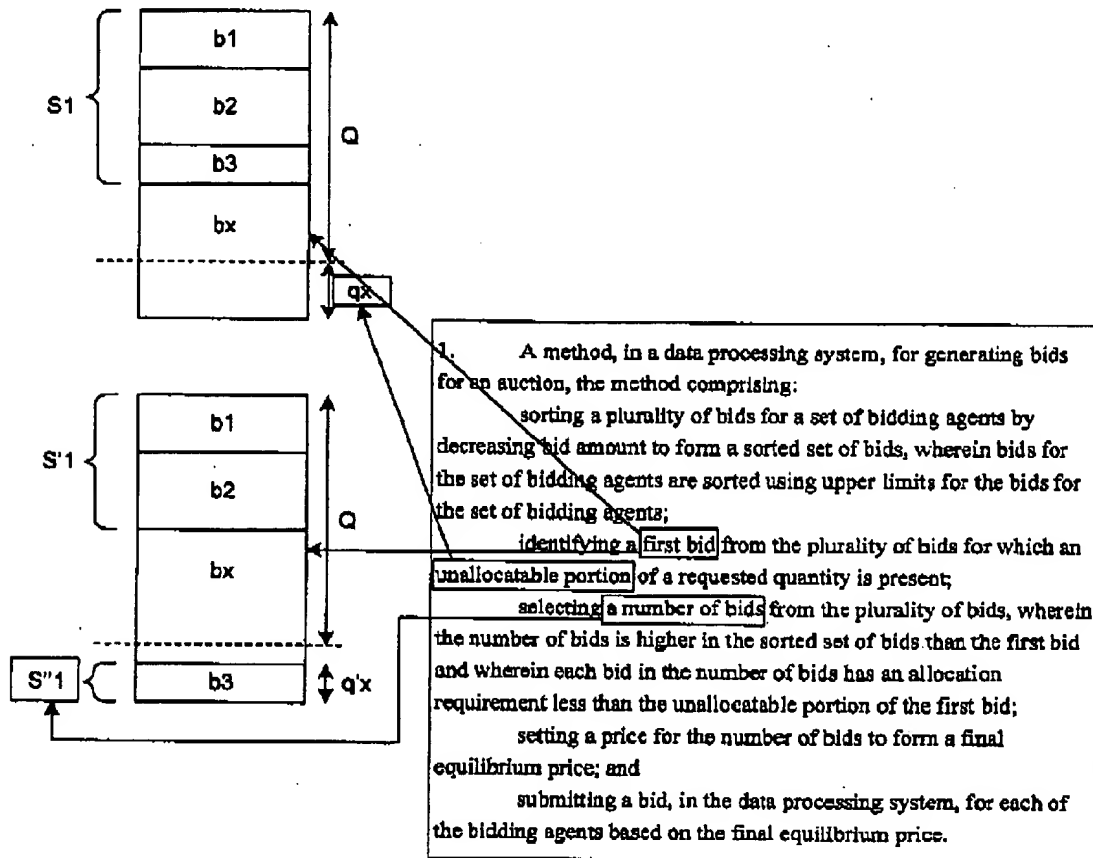
When there is a bidding war between two or more bidding agents, rather than human participants, the number of bids may become quite large. This causes the tables or other data structures storing the bids to grow quite large. Also, when a human bidder wishes to review bids to participate in the auction, the number of bids to review may become unmanageable. *Boarman* does not present a solution to this problem. Rather, in *Boarman*, a bidding agent will simply submit a bid that is the minimum bid plus a minimum increment.

In contradistinction, the present invention, as recited in independent claims 1 and 5, for example, identifies a bid requesting a quantity for which an unallocatable portion is present and selects a number of bids, wherein the number of bids is higher in the sorted set of bids than the identified bid and each bid in the number of order bids has an allocation requirement less than the unallocatable portion of the identified bid. The present invention, as recited in independent claims 1 and 5, for example, then selects a number of bids from the sorted set of bids for which the requested quantity is less than or equal to the unallocatable portion, the shortfall.

Boarman is silent to the recited features of selecting a number of bids that have an allocation requirement less than the unallocatable portion of the identified bid. *Boarman* does not teach setting a final equilibrium price for the selected number of bids. Rather, in *Boarman*, each bid has whatever price is specified in the bid. The Final Office Action does not address these distinctions other than to conclude that they are taught in seemingly arbitrary and irrelevant portions of the reference.

The limitations of the invention, for example the invention recited in claim 1, are illustrated below. The following depiction is merely an example to illustrate the claimed features

and is not meant to define or limit the claimed invention to the particular example shown. The claims themselves shall define the invention.



As illustrated above, if one or more bids (b3) in the sorted set (S1) are higher than bx, but have an allocation requirement (q'x) that is less than the shortfall (qx), then those bids (S'1) are selected and a price is set for the bids to form a final equilibrium price. The bid proxies use the final equilibrium price, rather than the price of bid bx plus a minimum increment, to submit a bid. This eliminates bid proxies from getting into a "bidding war" and submitting many small bids above bx.

As stated above, *Boarman* does not teach identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present, selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, and setting a price for the number of bids to form a final

equilibrium price. Since the applied reference fails to teach or fairly suggest each and every claim limitation, *Boarman* does not anticipate claim 1, for example.

The Final Office Action does not address these limitations other than to conclude that they are taught in seemingly arbitrary and irrelevant portions of the reference. For example, the Final Office Action alleges that *Boarman* teaches identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present, as recited in claim 1, for example, because *Boarman* teaches "remaining two hub caps" at col. 1, lines 42-49. This portion of *Boarman* states:

As a more detailed example, a seller may offer or list five hubcaps for sale at \$50.00 each. The auction host, possibly in conjunction with parameters specified by the seller, may define a minimum bid increment, which in the context of this example is defined as \$1.00. A first bidder, Mary, wants three of the hubcaps, and submits a bid totaling \$100.00. A second bidder, Hank, wants the remaining two hubcaps, and submits a bid totaling \$110.00. Both Mary and Hank may have the option of accepting fewer items than they desire.

The Final Office Action proffers no explanation as to how a human bidder, Hank, deciding to bid \$110.00 for the remaining two hubcaps is somehow equivalent to identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present, as in the claimed invention.

The Final Office Action then alleges that *Boarman* teaches selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid, as recited in claim 1, for example, at col. 6, lines 30-65. Clearly, this portion of *Boarman* appears much later in the disclosure. In fact, the earlier portion appears in the Background section, while the latter portion appears in the Detailed Description section. Certainly, the latter citation has nothing whatsoever to do with Hank's bid of \$110.00 on the remaining two hubcaps. The Examiner cannot merely point to arbitrary portions of a reference as teaching the particular claim features. The claim must be examined as a whole. In other words, the reference must teach each and every feature, arranged as they are in the claims, in order to anticipate the claims. In this case, *Boarman* does not anticipate claim 1, for example.

Independent claims 5, 13, 18, 22, 30, and 31 recite subject matter addressed above and are allowable for similar reasons. Since claims 6-12, 14-17, 21, and 23-29 depend from claims 5, 13, 18, and 22, the same distinctions between *Boarman* and the invention recited in claims 6-12, 14-17, 21, and 23-29 apply for these claims. Additionally, claims 6-12, 14-17, 21, and 23-29 recite other additional combinations of features not suggested by the reference.

Therefore, Appellants respectfully request that the rejection of claims 1, 4-18, and 21-31 under 35 U.S.C. § 102(e) not be sustained.

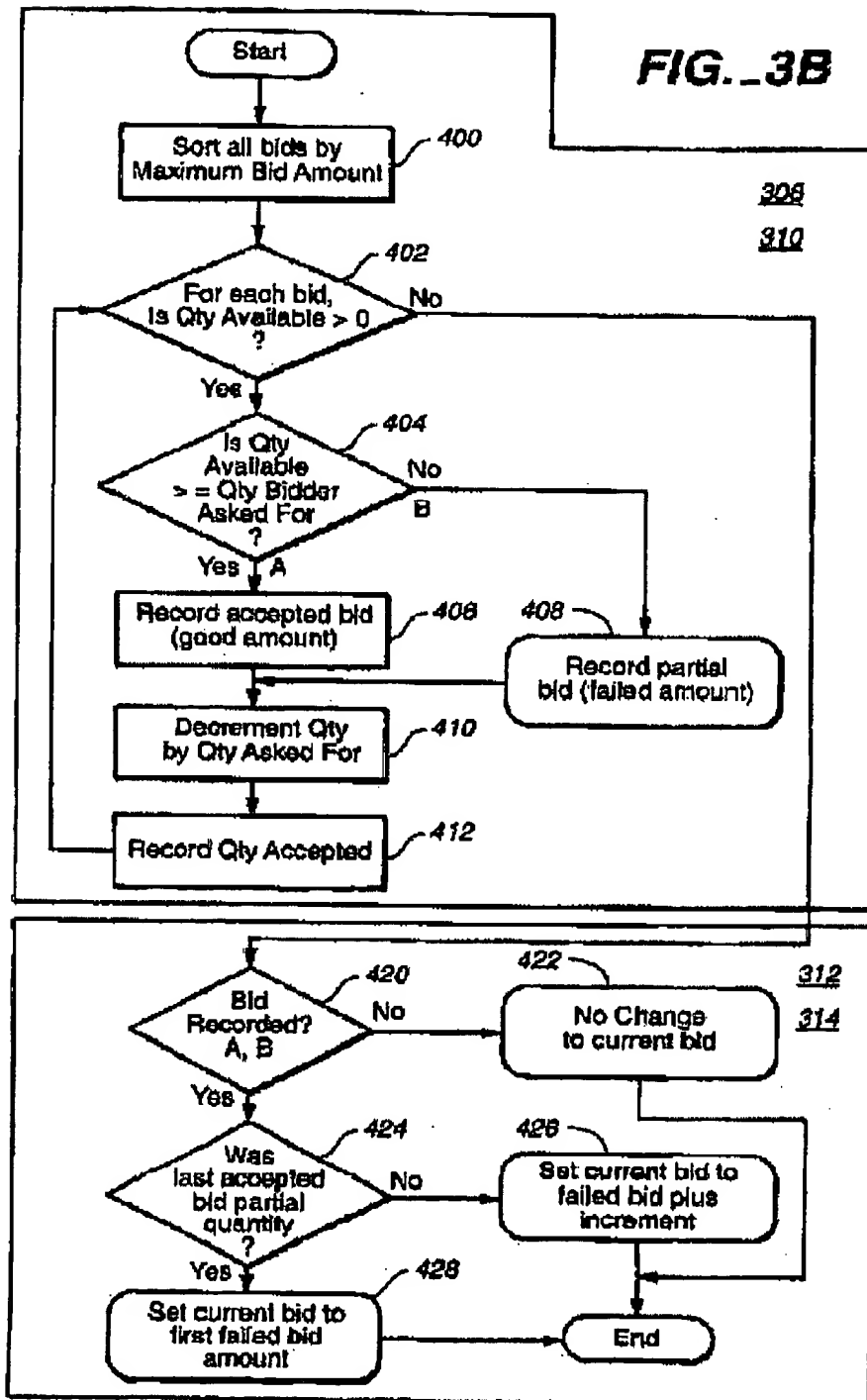
Furthermore, *Boarman* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Absent the Office Action pointing out some teaching or incentive to implement *Boarman* to select bids that request a quantity that is less than an unallocated portion, one of ordinary skill in the art would not be led to modify *Boarman* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Boarman* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using Appellants' disclosure as a template to make the necessary changes to reach the claimed invention.

IIA. 35 U.S.C. § 102. Alleged Anticipation of claims 7, 8, 24, and 25

With respect to claim 7, the Final Office Action alleges that *Boarman* teaches that each bid in the selected number of bids is selected from the plurality of bids based on the allocation requirement, upper limit, and time when each order bid in the number of order bids was received at FIG. 3B and col. 5, lines 45-50. Col. 5, lines 44-50, of *Boarman* states:

The auction manager 116 then selectively calculates a new bid amount, and automatically adjust existing bids in accordance with each participant's corresponding proxy value in step 312. In step 314, the auction manager 116 notifies auction participants of their current status relative to being auction winners or auction losers.

This portion makes no mention whatsoever of selecting plurality of bids that are higher in the sorted set of bids than the identified first bid, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid and wherein the selected number of order bids are selected based on the allocation requirement, upper limit, and time when each order bid in the number of order bids was received, as alleged in the Office Action. FIG. 3B of *Boarman* is as shown on the following page.



Again, this cited portion does not teach or fairly suggest the limitations alleged in the Office Action. The portions cited in the Final Office Action appear to be arbitrarily selected. There is no mention of an upper limit or a time the bid was received. Clearly, *Boarman* does not anticipate claim 7. Claims 8, 24, and 25 recite subject matter addressed above with respect to claim 7 and are allowable for similar reasons.

Therefore, Appellants respectfully request that the rejection of claims 7, 8, 24, and 25 under 35 U.S.C. § 102(e) not be sustained.

IIB. 35 U.S.C. § 102, Alleged Anticipation of claims 9 and 26

With respect to claim 9, the Final Office Action alleges that *Boarman* teaches that each bid in the selected number of bids is selected from the plurality of bids based on the allocation requirement and the number of order bids that maximize revenue at col. 1, lines 45-60, and col. 6, lines 30-40. Col 1, lines 42-59, of *Boarman* states:

As a more detailed example, a seller may offer or list five hubcaps for sale at \$50.00 each. The auction host, possibly in conjunction with parameters specified by the seller, may define a minimum bid increment, which in the context of this example is defined as \$1.00. A first bidder, Mary, wants three of the hubcaps, and submits a bid totaling \$100.00. A second bidder, Hank, wants the remaining two hubcaps, and submits a bid totaling \$110.00. Both Mary and Hank may have the option of accepting fewer items than they desire. Next, a third bidder, John, submits a bid totaling \$75.00 for all five items. The auction host may then increase Mary and Hank's bid amounts to \$76.00, in which case John will need to submit a bid greater than \$76.00 to win the auction. In the event that John submits a bid of \$125.00 for all five items, the auction host enters his bid as \$111.00, which equals the previous high bid amount (Hank's bid of \$110.00) plus the minimum bid increment. If neither Mary nor Hank submit further bids, John will receive all five hubcaps for \$111.00.

Col. 6, lines 29-43, of *Boarman* states:

FIG. 4 is a table showing an exemplary proxy-based Dutch auction bidding sequence and corresponding auction status information. In the exemplary bidding sequence, ten items are offered for sale, and the auction manager 116 has determined or defined an initial minimum bid amount of \$0.01. A first participant, Joe, submits a first bid specifying or indicating a quantity requested, value of three, a current proxy value of \$6.0,

and a partial acceptance flag that indicates Joe is willing to accept fewer than three items. Upon receiving and processing the first bid, the auction manager 116 allocates three items to Joe, and sets a current bid amount to the minimum bid amount, or \$0.01. The auction manager 116 additionally sets or adjusts a first participant bid value corresponding to or associated with Joe to the current bid amount, i.e., \$0.01.

Neither the cited portions nor any other portions of *Boorman* teach or fairly suggest selecting a number of bids that are higher in the sorted set of bids than the identified first bid, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid and wherein the selected number of order bids are selected based on the allocation requirement and the number of order bids that maximize revenue. The Final Office Action proffers no analysis as to why the conventional auction schemes shown in the cited portions are somehow equivalent to a number of bids that are higher in the sorted set of bids than the identified first bid, wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid and wherein the selected number of order bids are selected based on the allocation requirement and the number of order bids that maximize revenue. As such, the Final Office Action fails to establish a *prima facie* case of obviousness for claim 9. Claim 26 recites subject matter addressed above with respect to claim 9 and is allowable for similar reasons.

Therefore, Appellants respectfully request that the rejection of claims 9 and 26 under 35 U.S.C. § 102(e) not be sustained.

CONCLUSION

In view of the above, Appellants respectfully submit that claims 1, 4-18, and 21-31 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to not sustain the rejections set forth in the Final Office Action.



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CLAIMS APPENDIX

The text of the claims involved in the appeal reads:

1. A method, in a data processing system, for generating bids for an auction, the method comprising:

 sorting a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids, wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents;

 identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present;

 selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid;

 setting a price for the number of bids to form a final equilibrium price; and

 submitting a bid, in the data processing system, for each of the bidding agents based on the final equilibrium price.

4. The method of claim 1, wherein the sorting step, identifying step, selecting step, and setting step are repeated for unallocated items, remaining bids, and remaining unpriced order bids.

5. A method, in a data processing system, for generating bids for bidding agents in an auction, the method comprising:

 sorting a plurality of bids by decreasing bid amount to form a sorted set of bids, wherein

each bid includes a quantity and wherein the plurality of bids includes order bids;

identifying a first bid requesting a quantity for which an unallocatable portion is present;

selecting a number of order bids from the plurality of bids, wherein the number of order bids is higher in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion of the first bid; and

setting a price, in the data processing system, for the number of order bids to form a final equilibrium price.

6. The method of claim 5, wherein the number of order bids is a single order bid.

7. The method of claim 5, wherein each bid in the number of order bids is selected from the plurality of bids based on the allocation requirement, upper limit, and a time when each order bid in the number of order bids was received.

8. The method of claim 5, wherein each order bid in the number of order bids is selected from the plurality of bids based on the allocation requirement and an upper limit.

9. The method of claim 5, wherein each bid in the number of order bids is selected based on the allocation requirement and the number of order bids maximize revenue.

10. The method of claim 5, further comprising:

repeating the selecting and setting steps for any remaining portion of the unallocatable portion and any remaining order bids in the plurality of bids.

11. The method of claim 5, wherein the price of the number of order bids is less than a price for the first bid.

12. The method of claim 5, wherein the number of order bids includes a bid accepting a partial allocation of a quantity for the bid.

13. A data processing system comprising:

a bus system;

a communications unit connected to the bus system;

a memory connected to the bus system, wherein the memory includes a set of instructions; and

a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to receive a plurality of bids through the communications unit, sort the plurality of bids by decreasing bid amount to form a sorted set of bids in which each bid includes a quantity and the plurality of bids includes order bids, identify a first bid within the sorted set of bids having a quantity in which an unallocatable portion is present, select a number of order bids from the plurality of bids in which number of order bids are higher in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion of the first bid, set a price for the number of order bids.

14. The data processing system of claim 13, wherein the bus system is a single bus.

15. The data processing system of claim 13, wherein the bus system includes a primary bus and a secondary bus.

16. The data processing system of claim 13, wherein the processing unit includes a plurality of processors.

17. The data processing system of claim 13, wherein the communications unit is one of a modem and Ethernet adapter.

18. A data processing system for generating bids for an auction, the data processing system comprising:

 sorting means for sorting a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids, wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents;

 identifying means for identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present;

 selecting means for selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid;

 setting means for setting a price for the number of bids to form a final equilibrium price;
and

 submitting means for submitting a bid for each of the bidding agents based on the final equilibrium.

21. The data processing system of claim 18, wherein the sorting means, identifying means, selecting means, and setting means are repeated for unallocated items, remaining bids, and remaining unpriced order bids.

22. A data processing system for generating bids for bidding agents in an auction, the data processing system comprising:

 sorting means for sorting a plurality of bids by decreasing bid amount to form a sorted set of bids, wherein each bid includes a quantity and wherein the plurality of bids includes order bids;

 identifying means for identifying a first bid requesting a quantity in which an unallocatable portion is present;

 selecting means for selecting a number of order bids from the plurality of bids, wherein the number of order bids are higher in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion of the first bid; and

 setting means for setting a price for the number of order bids.

23. The data processing system of claim 22, wherein the number of order bids is a single order bid.

24. The data processing system of claim 22, wherein each bid in the number of order bids is selected from the plurality of bids based on the allocation requirement, upper limit, and a time when each order bid in the number of order bids was received.

25. The data processing system of claim 22, wherein each order bid in the number of order bids is selected from the plurality of bids based on the allocation requirement and an upper limit.

26. The data processing system of claim 22, wherein each bid in the number of order bids is selected based on the allocation requirement and the number of order bids maximize revenue.

27. The data processing system of claim 22 further comprising:

repeating means for repeating initiation of the selecting means and setting means for any remaining portion of the unallocatable portion and any remaining order bids in the plurality of bids.

28. The data processing system of claim 22, wherein the price of the number of order bids is less than a price for the first bid.

29. The data processing system of claim 22, wherein the number of order bids includes a bid accepting a partial allocation of a quantity for the bid.

30. A computer program product in a computer readable medium for generating bids for an auction, the computer program product comprising:

first instructions for sorting a plurality of bids for a set of bidding agents by decreasing bid amount to form a sorted set of bids, wherein bids for the set of bidding agents are sorted using upper limits for the bids for the set of bidding agents;

second instructions for identifying a first bid from the plurality of bids for which an unallocatable portion of a requested quantity is present;

third instructions for selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid;

fourth instructions for setting a price for the number of bids to form a final equilibrium price; and

fifth instructions for submitting a bid for each of the bidding agents based on the final equilibrium.

31. A computer program product in a computer readable medium for generating bids for bidding agents in an auction, the computer program product comprising:

first instructions for sorting a plurality of bids by decreasing bid amount to form a sorted set of bids, wherein each bid includes a quantity and wherein the plurality of bids includes order bids;

second instructions for identifying a first bid requesting a quantity for which an unallocatable portion is present;

third instructions for selecting a number of order bids from the plurality of bids, wherein the number of order bids are higher in the sorted set of bids than the first bid and have an allocation requirement less than the unallocatable portion of the first bid; and

fourth instructions for setting a price for the number of order bids.

EVIDENCE APPENDIX

There is no evidence to be presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.